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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,926

08/20/2003

James Rudolf Meyer

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EXAMINER

GORDON, BRIAN R

ART UNIT

PAPER NUMBER

1743

MAIL DATE

DELIVERY MODE

05/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/643,926

Applicant(s)

MEYER ET AL.

Examiner

Brian R. Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 27, 2007 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 and 3-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support for the device including a single storage well as indicated by claim 1. The device is disclosed as including a rack (or an array of storage wells [0069]. As to claim 5, there is no support for the washing module including both a carriage tray and storage well support. The rack wash module includes a shaker system that shakes the rack (or storage well arrays) [0069] as

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disclosed in applicant's paragraphs [0106-0107]. It should be noted the shaker system 700 of the rack wash module is different from the incubator /shaker module 17.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term carriage tray is not found in the specification. It appears as if the term should be carrier tray.

It is unclear what is the structural relationship between the "storage well", "carriage tray" and the other claimed elements.

It appears an accurate description of applicant's invention is "...arrays of storage wells 1-3 are removably mounted in a carrying tray 20." [0055] The specification further discloses "The user can decide whether to put one, two or three arrays of storage wells in the tray depending upon the number of samples to be tested.[0056]"

6. In an effort to expedite the prosecution of the case, on May 4, 2007 the examiner presented applicant's representative, Kirk Berkhimer, with the following proposed amendment. The examiner explained the amendments would be appropriate for overcoming the 112 issues however allowance of such claims would be pending an updated search of the prior art. On May 9, 2007 the examiner placed a phone call to Mr. Berkhimer and was informed applicant had not yet responded to such amendments

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and stated a response and would probably not be received until the following week. The examiner informed Mr. Berkhimer an Office Action was required before such time.

Proposed Amendments:

1. An assay device washing module for washing an assay device located within a storage well, the module comprising:

an array of storage wells;

a wash location including a carrier tray supporting said array of storage wells;

~~a storage well;~~

~~a carriage tray;~~

a wash fluid delivery probe and an aspirator probe mounted to a movable support,

wherein the aspirator probe being mounted at an angle to a vertical axis and the movable support being movable at substantially the same angle,

wherein ~~when~~ the aspirator probe is operable to be inserted into ~~a the storage well of the array such that the aspirator probe~~ it is brought close to a side of the storage well; and

a probe wash reservoir located beneath the ~~carriage~~ carrier tray and a said wash location of the storage wells, the movable support being movable, in the absence of the carrier tray and storage wells, to bring the aspirator probe into the probe wash reservoir.

5. A module according to claim 1, further comprising a ~~storage well support and means for shaking the well support~~ array of storage wells during washing.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Copeland, Keith G. et al.; Stylli, Chari et al.; Ryser; Daniel; Lehtinen; Kauko et al.; Furst; Otto et al.; Overbeck; James W. et al.; Watts; Richard P. et al.; Nugteren; Robert J. et al.; Shaw; James D. et al.; Mazza; John C. et al.; Tersteeg; Glenn E. et al.; Micklash; Kenneth J. II et al.; and Mazza; John C. disclose angled fluid transfer devices.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, Telework Thurs., 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Brian R Gordon
Primary Examiner
Art Unit 1743

brg

BRIAN R. GORDON
PRIMARY EXAMINER